



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/826,684

04/16/2004

Hugues F. Malandain

17116-004001

9582

26181 7590 03/21/2008

FISH & RICHARDSON P.C.

PO BOX 1022

MINNEAPOLIS, MN 55440-1022

EXAMINER

ARAJ, MICHAEL J

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

03/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/826,684	Applicant(s) MALANDAIN, HUGUES F.	
	Examiner MICHAEL J. ARAJ	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27, 31-36 and 38-44 is/are rejected.
- 7) ☒ Claim(s) 28-30 and 37 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/29/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 29, 2008 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 10-13, 16, 20-24, 31-36 and 38-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Bernhardt et al. (U.S. Patent No. 5,591,166).

Bernhardt et al. disclose an elongate plate support element with a top portion and a bottom portion having a bottom surface and on or more apertures passing therethrough that spans two or more vertebrae (Fig. 1). The bottom surface includes a receiver configured to receive a plurality of anchor assemblies wherein the anchor assemblies includes a means for locking the anchor assembly to the bottom portion of the support element. The means for locking includes a locking aperture. When

Art Unit: 3733

assembled, the anchor assemblies do not pass through the support element. (**See Figure 1 below**) The base is comprised of a base head wherein the base head is movably disposed within the anchor assembly. The base head is consisting of a polyaxial connector and can be locked in a desired position. One or more apertures have dimensional configuration providing access to the base and the means for locking the base to the anchor assembly through the top portion of the support element, wherein the head of the base for the anchor assembly does not pass through the support element. The apertures (14), as seen in Fig. 1 of '166, provide this access. The anchor assembly can have a 90-degree twist on configuration depending on its application. The receiver is integrally disposed and attached within the bottom surface of the bottom portion of the support element having a configuration of a slot. The receiver or access ports spans the length of the bottom surface and is comprised of two closed ends. The means for locking the anchor assembly to the support element includes a setscrew (28) disposed within the locker aperture of the nut (70), wherein the screw and locker aperture are threaded.

Art Unit: 3733

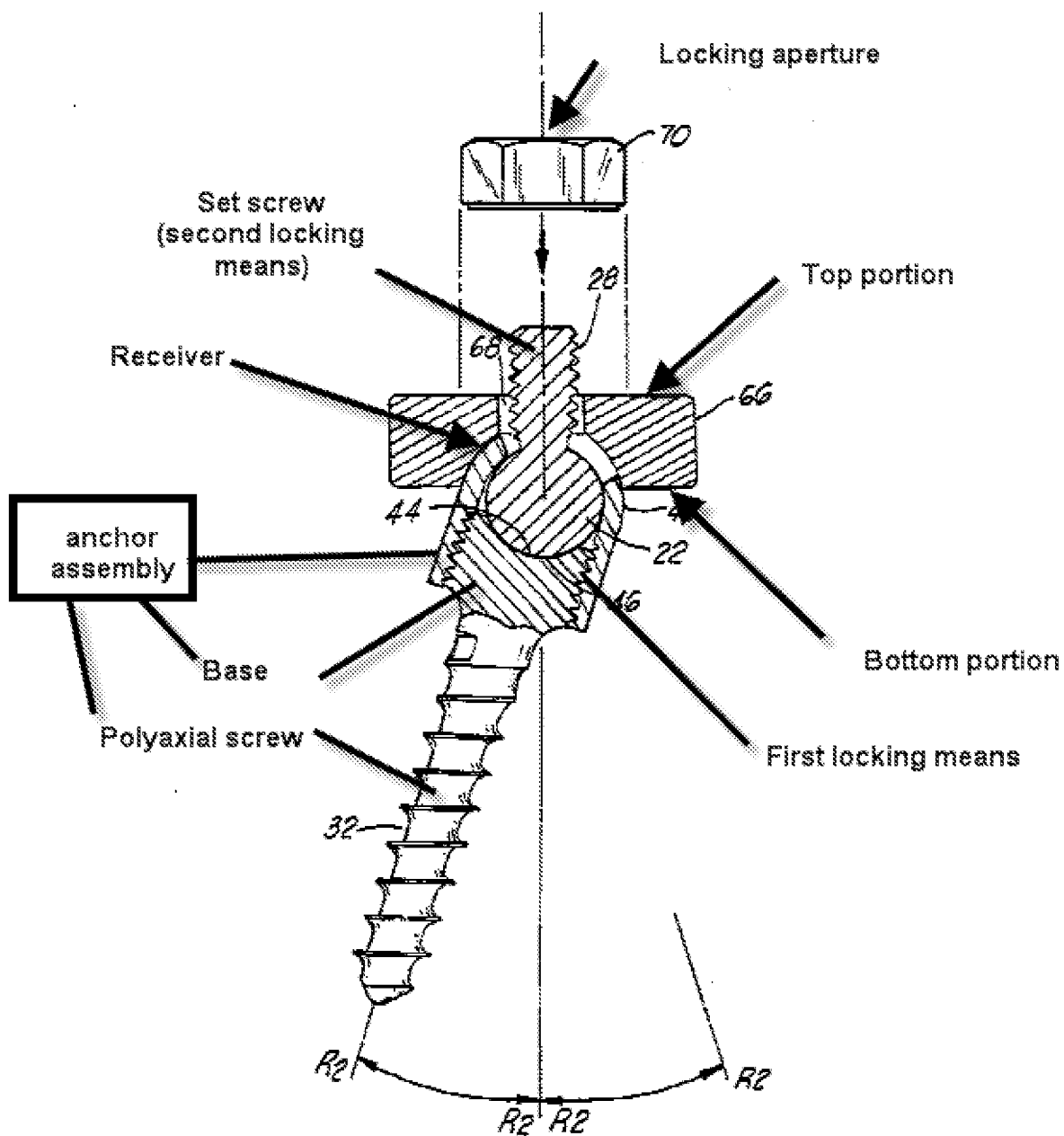


Figure 1 (taken from '166)

Bernhardt et al. also disclose a methods of implanting a plurality of anchor assemblies having bases into the bone with a first and second locking means (see Figure 1 above), connectively positioning a support element with a receiver, locking the bases within the anchor assemblies and locking the anchor assemblies within the support element receiver, where the anchor assemblies do not pass through the support element. The support element is disposed within a body location such as subcutaneous fat layer of the spine. It also can be viewed that the support element is disposed external to the body when the surgery is taking place.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 9, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernhardt et al. (U.S. Patent No. 5,591,166).

Bernhardt et al. disclose the claimed invention except for the support element and the anchor assembly being made of titanium. It would have been obvious to one having ordinary skill in the art at the time the invention was made these pieces with titanium since it is an obvious type of biocompatible material as already stated in the document, and since it has been held to be within the general skill of a worker in the art

to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Claims 14, 15, 18, 19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernhardt et al. (U.S. Patent No. 5,591,166) further in view of Morrison et al. (U.S. Patent No. 6,315,779).

Bernhardt et al. disclose the claimed invention except for the receiver having a t-slot configuration or having its ends having a combination of closed and opened ends. Morrison et al. disclose a T-slot configuration as well as variations of the ends in order to better place the anchor assemblies at multiple locations desired. Having closed or opened ends would be best suited for a case by case basis. It would have been obvious to one skilled in the art at the time the invention was made to have created the device of Bernhardt et al. with a T-slot in view of Morrison et al., in order to have a better guided receiving slot to place have the anchor assemblies in specific locations.

Allowable Subject Matter

Claims 28-30 and 37 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1, 4, 14, 38 and 44 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. ARAJ whose telephone number is (571)272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J Araj/
Examiner, Art Unit 3733

/Eduardo C. Robert/
Supervisory Patent Examiner, Art Unit 3733